

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #1	CCRB Case #: 201500488	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/22/2015 10:20 PM	Location of Incident: § 87(2)(b) en-route to the 52 Precinct stationhouse	Precinct: 52	18 Mo. SOL 7/22/2016	EO SOL 7/22/2016	
Date/Time CV Reported Fri, 01/23/2015 8:45 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 01/23/2015 8:45 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Kevin Maloney	00000	904435	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Carbone	12540	950159	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Kevin Maloney	Abuse: At § 87(2)(b) in the Bronx, Lt. Kevin Maloney stopped § 87(2)(b)	§ 87(2)(b)
B.LT Kevin Maloney	Discourtesy: At § 87(2)(b) in the Bronx and en-route to the 52nd Precinct stationhouse, Lt. Kevin Maloney spoke discourtesly to § 87(2)(b)	§ 87(2)(b)

Case Summary

On January 22, 2015, at approximately 10:20 p.m., § 87(2)(b) was walking down Perry Avenue in front of his building at § 87(2)(b) in the Bronx. An RMP pulled up to § 87(2)(b) and Lt. Kevin Maloney and PO Michael Carbone got out. Lt. Maloney told § 87(2)(b) to, “Stop right there” (**Allegation A**). Lt. Maloney removed a four to five inch gravity knife from § 87(2)(b)'s right side and then placed § 87(2)(b) under arrest for § 87(2)(b). § 87(2)(b) asked Lt. Maloney what the problem was and Lt. Maloney replied, “Shut the fuck up” (**Allegation B**). On the ride to the 52nd Precinct stationhouse, § 87(2)(b) complained to the officers about his arrest and Lt. Maloney told him again to, “Shut the fuck up” (also **Allegation B**).

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation for this case, § 87(2)(b) (encl. 5C).
- § 87(2)(b) § 87(2)(c)
- On March 26, 2015, a FOIL request was submitted, though the results are not yet received, for any notices of claim filed by § 87(2)(b) for this incident (encl. 6A-6B).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (encl. 1A).
- Lt. Maloney has been a member of the NYPD for 21 years and has 26 prior CCRB allegations involving 13 cases. Eight of these allegations have been substantiated, including three discourtesy allegations in 1996. § 87(2)(g)

Potential Issues

- There were no independent witnesses to this incident (encl. 1K).
- No video footage of the stop was located (encl. 5D-5F).

Findings and Recommendations

Allegations not pleaded

- Although § 87(2)(b) said that Lt. Maloney frisked his arms, legs, torso, and searched his pockets, these actions took place after § 87(2)(g) arrest. § 87(2)(g)

Allegation A -Abuse of Authority: At § 87(2)(b) in the Bronx, Lt. Kevin Maloney stopped § 87(2)(b)

Lt. Maloney admitted to stopping § 87(2)(b) in front of § 87(2)(b) § 87(2)(b) admitted that he was carrying a four to five inch gravity knife on his waistband during the incident. It is undisputed that § 87(2)(b) raised his hands up when Lt. Maloney approached him (encl. 1K, 2F, and 2L).

§ 87(2)(b) initially said during his CCRB interview, that he was walking back to his building after speaking to a friend. His knife was clipped to the outside of his belt on his right side, but fully concealed by the sweatshirt that he was wearing, even when his hands were raised (encl. 1K).

In a later phone statement, § 87(2)(b) changed his story to say that the knife was clipped to the inside of his belt so that the knife was inside his pants and only the clip was visible from the outside. However, § 87(2)(b)'s sweatshirt was covering the clip and the knife did not create a noticeable bulge (encl. 1O).

Lt. Maloney said that they drove down Perry Avenue, he saw § 87(2)(b) peering down into the gated entrance of an Islamic Mosque at § 87(2)(b). This behavior caught Lt. Maloney's attention and he kept his eyes on § 87(2)(b). As they drove past, Lt. Maloney noticed a four to five inch, protruding bulge, similar in shape to a candy bar on § 87(2)(b)'s right, front side. Lt. Maloney initially suspected that this bulge could be a gun and ordered PO Carbone to stop the RMP. He said that the lighting in this area was very good, due to numerous street lights, and that nothing was obstructing his view. Lt. Maloney instructed § 87(2)(b) to raise his hands. When § 87(2)(b) complied, his jacket came up and fully exposed his knife, which was clipped to the outside of his main, right, front, pants pocket. Lt. Maloney immediately identified the knife as a gravity knife, based on his training and experience, in which he has seen similar knives in thousands of arrests. Lt. Maloney then removed § 87(2)(b)'s knife and placed him under arrest. Prior to transporting § 87(2)(b) to the 52nd Precinct stationhouse, Lt. Maloney tested the knife by flicking it with his hand and observed that through the force of gravity, the knife opened and locked (encl. 2L).

PO Carbone confirmed that as the officers approached § 87(2)(b) his knife was fully exposed and clipped to the outside of his right, front, pants pocket. He also confirmed that Lt. Maloney tested the knife at the scene and he re-tested the knife at the 52nd Precinct stationhouse prior to processing the desk appearance ticket (encl. 2F).

According to People V. Bour reasonable suspicion of criminality is required for a stop. People v. DeBour, 40 N.Y.2d 201 (1976) (encl. 0A-0K).

According to People V. Jhameer Cameron, an officer, with training and experience in weapons identification, has reasonable suspicion to stop an individual when they observe that individual possessing a knife with features resembling a gravity knife. People V. Jhameer Cameron (2014) N.Y. App. Div. LEXIS 7877; NY Slip Op 07934 (encl. 0L).

§ 87(2)(g)
[REDACTED]

Allegation B-Discourtesy: At § 87(2)(b) in the Bronx and en-route to the 52nd Precinct stationhouse, Lt. Kevin Maloney spoke discourtesly to § 87(2)(b)

§ 87(2)(b) said that when he was placed into handcuffs, he asked Lt. Maloney what the problem was and Lt. Maloney allegedly replied, “Shut the fuck up.” § 87(2)(b) admitted that he was upset and complaining to the officers during the drive to the stationhouse. § 87(2)(b) said that he asked the officers repeatedly to let him go and that eventually Lt. Maloney allegedly told him to “Shut the fuck up” (encl. 1K)

Lt. Maloney denied ever using profanity towards § 87(2)(b) during this incident (encl. 2L).

PO Carbone confirmed that Lt. Maloney never used profanity towards § 87(2)(b) (encl. 2F).

§ 87(2)(g)

Team: Pod 1

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date